

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

<b>JAN LISTER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 03-CV-0767-CVE-FHM</b>
	)	
<b>DEPARTMENT OF THE TREASURY,</b>	)	
<b>JO ANNE B. BARNHART, Commissioner,</b>	)	
<b>Social Security Administration,</b>	)	
	)	
<b>Defendant.</b>	)	

**OPINION AND ORDER**

On July 19, 2006, Magistrate Judge Frank McCarthy entered a report and recommendation (Dkt. # 16) recommending that the Court dismiss plaintiff's complaint without prejudice. Plaintiff filed an objection to the report and recommendation (Dkt. # 17). The Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The Court may accept, reject, or modify the report and recommendation of the magistrate judge in whole or in part. Fed. R. Civ. P. 72(b). For the reasons stated herein, the Court adopts the report and recommendation of the magistrate judge.

Plaintiff filed her complaint without prepayment of the filing fee and included a Pauper's Affidavit. However, the magistrate judge issued an order to plaintiff to cure deficiencies advising plaintiff that she needed to file a motion for leave to proceed in forma pauperis with her complaint. Plaintiff subsequently filed a motion and affidavit to proceed in forma pauperis which was denied. The magistrate judge found that plaintiff did not comply with LcvR 3.3(a) because her motion to

proceed in forma pauperis did not contain the required financial information.<sup>1</sup> Plaintiff was ordered to pay the filing fee by July 13, 2004 or her complaint would be dismissed. She appealed the magistrate judge's order and the Court denial of plaintiff's motion to proceed in forma pauperis. Plaintiff proceeded to file an appeal with the Tenth Circuit and the Tenth Circuit affirmed, holding that this Court did not abuse its discretion by denying plaintiff's motion to proceed in forma pauperis. Following denial of her appeal, Plaintiff has not filed any further motions or paid the filing fee. Under LcvR 3.3(e), plaintiff had twenty days after her motion to proceed in forma pauperis was denied to pay the filing fee or her complaint would be dismissed.


The magistrate judge has recommended that plaintiff's complaint be dismissed, because she has not been given permission to proceed in forma pauperis nor has she paid the filing fee. Plaintiff's objection to the report and recommendation merely restates her claim that she does not have any money and that her current social security benefits do not constitute income. This does not address the deficiencies with her motion to proceed in forma pauperis. Therefore, plaintiff's complaint must be dismissed because she has not paid the filing fee or submitted the required financial information to proceed in forma pauperis under the local rules.

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<sup>1</sup> Local rule 3.3(a) states that "an applicant who seeks leave to proceed with out prepayment of the filing fees must, at the time of initiating the civil action, suit or proceeding, or appeal from a judgment in a civil action, submit a motion to proceed in forma pauperis on the form approved by this Court and supplied by the Court Clerk upon request. Failure to use such form or to furnish the Court with the equivalent information required by the form may result in the motion being stricken."

**IT IS THEREFORE ORDERED** that the report and recommendation (Dkt. # 16) is **adopted**, and plaintiff's complaint (Dkt. # 1) is **dismissed** without prejudice to refiling.

**DATED** this 3rd day of August, 2006.

  
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CLAIRE V. EAGAN, CHIEF JUDGE  
UNITED STATES DISTRICT COURT